IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.381 OF 2007

Nanji Bachu Patel and others ...Appellants

vs.

Goswami Shrimad Gokulnathji Maharaj & Ors. ...Respondents

Mr.G.S.Godbole i/b Mr.I.A.Shaikh for the Appellants
Mr.N.V.Walawalkar for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 7, 2007.

P.C.:

1. The Appeal is by the original Plaintiffs challenging the order dated 18th April 2007 passed by the learned Judge of the City Civil Court, Mumbai by which a prayer for ad-interim relief made by the Appellants has been rejected. The suit is filed by the Appellants, inter alia, for declaration that the Appellants are in occupation of the area admeasuring 29000 sq.yards which is more particularly described in the plaint and which is more particularly shown on the map annexed to the plaint. A declaration is also claimed of easementary rights over the passages more particularly described in the suit. Perpetual injunction is also claimed restraining the Respondents-Defendants for interfering with possession of the Appellant over the suit land.

2. The learned Counsel for the Appellants has invited my attention to the various paragraphs of the impugned order. He pointed out that the learned Judge has proceeded on erroneous

assumption that in the plaint, the Appellants have claimed that they were cultivating only an area of 15,000 sq. yards. He pointed out that there are specific averments to show that the Appellants are claiming possession of 29,000 sq. yards. He has invited my attention to various paragraphs of the plaint. He has also invited my attention to the fact that the suit filed by the first Respondent was dismissed as abated. He submitted that there is enough documentary evidence on record to show the possession of the Appellants over the suit property and therefore, the learned Judge ought to have granted ad-interim relief for protecting the possession of the Appellants. He submitted that by way of ad-interim relief, the Appellants had made a prayer an appointment of the Court Commissioner and in the impugned order there is no consideration of the said prayer.

3. I have considered the said submissions. Prima facie, there is some merit in the submission made by the learned Counsel for the Appellants as regards tentative findings recorded by the Trial Court in paragraphs 4 and 5 of the impugned order. However, prima facie, it appears to me that the Appellants are not claiming any specific right in respect of the suit land which is admittedly of the ownership of the first Respondent. There is no ad-interim relief operating in favour of the Appellants from 18th April 2007. The reliefs which are claimed in the plaint, prima facie, appear to be

based only on alleged possession of the Appellants. The Appellants are claiming injunction as against the first Respondent who is the owner of the suit property. Considering the aforesaid factors, it is difficult to find fault with the discretionary order passed by the Trial Court declining the grant ad-interim relief.

4. There is merit in the grievance made by the learned Counsel for the Appellants as regards non consideration of ad-interim relief in terms of prayer clause (c) of the Notice of Motion. Prayer clause (c) of the Notice of Motion will have to be considered by the learned Trial Judge at the time of hearing the Notice of Motion. If the learned Judge finds that the appointment of the Court Commissioner is necessary for deciding the Notice of Motion finally, he will pass an order appointing the Court Commissioner. He will defer the hearing of the Notice of Motion till the report of the Court Commissioner is received.

5. It must be clarified that the observations which are made in the impugned order and in this order are only tentative observations for considering the prayer for ad-interim injunction. Notice of Motion and the prayer for appointment of Court Commissioner will be decided by the learned Judge without being influenced by the observations made in this order.

6. Hence, I pass the following order :

i) Subject to what is observed above, impugned order of the learned Judge to the extent to which prayer for grant of ad-interim injunction is rejected is hereby confirmed.

ii) It is clarified that the learned Judge will consider the prayer clause (c) of the pending Notice of Motion in accordance with the observations made in this Judgment.

iii) Notice of Motion will be decided as expeditiously as possible and preferably within a period of six weeks from the date of production of an authenticated copy of this order.

iv) All contentions of the parties on merits of the pending Notice of Motion are kept open.

v) Appeal is accordingly disposed of.

JUDGE